
(1994) 07 BOM CK 0124
In the Bombay High Court
Case No : Writ Petition No. 1135 of 1990

Saroj Ramesh Shah

APPELLANT

Vs

Balakrishna Pen Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 05-07-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1995) 70 FLR 1 : (1995) 1 LLJ 176

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Judgement

Kapadia, J.—This Writ Petition is filed by the widow of the original employee, one Ramesh Shah, who died on 14th March 1991. The petition was initially filed by the employee. On his demise, his widow has been brought in record.

2. The short question which requires to be decided in the present petition is whether the deceased was a workman, as defined u/s 2(s) of the Industrial Disputes Act, 1947 and secondly whether his services were terminated illegally as alleged by him in the Labour Court vide Reference (IDA) No. 322 of 1983 decided by the Labour Court on 28th November 1989.

3. The facts giving rise to this writ petition briefly, are as follows :

(a) By way of reference (IDA) No. 322 of 1983, Ramesh Shah, since deceased, sought reinstatement with full back wages and continuity of service from 9th September, 1981. In his statement of claim he alleged that the company had appointed him on 26th November 1979 on probation for six months on a consolidated salary of Rs. 2,500/- per month; that as per the terms of employment, he was made permanent after six months in June 1980; that he was paid conveyance allowance of Rs. 1,000/-; that the assignment was to translate English into Gujarati for the Managing Director, who did not know English. The Managing Director used to dictate the draft in Gujarati and the deceased used to translate the draft in English and accordingly, it was alleged

that the was doing clerical work for the Managing Director. It was further alleged that he was under supervision and control of the Managing Director. He had no independent power to decide. He had no independent power to take policy decisions. He was required to be various types of works under the instructions of the Managing Director including filing of Affidavits in the City Civil Court as Principal Officer and in the circumstances, it was alleged that Section 2(s) of the Industrial Disputes Act was attracted to the facts of the case. In the statement of claim it was further alleged by the deceased that he was entitled to be reinstated in service because the Company had retrenched him illegally without giving any prior notice, notice pay or retrenchment compensation. In the circumstances, reinstatement was also sought by way of the above reference. In reply to the statement of claim, the Company, by their Written Statement, contended that the deceased was not a workman. He was initially appointed as an Assistant to the Managing Director. The deceased used to make proposals to the Bank in the matter of loan proposals to the Bank in the matter of loan which the Company applied for. The deceased was subsequently appointed as a Personal Assistant to the Managing Director. The deceased was looking after customers. The deceased used to entertain the suppliers and the Government officers whenever they visited the company. The deceased used to sign Affidavits in the City Civil Court as a Principal Officer of the company. The deceased had taken part in the collective bargaining on behalf of the company vis-a-vis the employees. The deceased had done the work of arranging police bandobust during the strike period on behalf of the company. The deceased used to file complaints on behalf of the company in the Police Station during the period of the strike. In the above circumstances, it was contended that the deceased was not a workman u/s 2(s) of the Act. By the Written Statement, the Company also contended that the salary of the deceased was Rs. 2500/- per month. He was also paid conveyance of Rs. 1,000/- per month and in the circumstances, it was contended that he was not a workman u/s 2(s) of the Industrial Disputes Act. By written statement, it was further pointed out that the deceased had developed cardiac problem. He used to remain absent very often. The company has relied upon letters written by the deceased to the company in which he has stated that he could not attend the residence of the Directors and to carry out his duties on account of his illness. It was a case of the Company that the services of the deceased were never terminated as alleged by the deceased. The deceased remained absent because he had health problems and in the circumstances, there was no substance in the contention of the deceased that his services were wrongfully terminated. On the above facts, evidence was led before the Labour Court. The Labour Court, by the impugned Judgment and order, had come to the conclusion that the deceased was a Personal Assistant to the Managing Director; that the deceased used to file Affidavits in the City Civil Court as a Principal Officer of the Company; that the deceased was paid conveyance allowance per month amounting to Rs. 1,000/-, that the deceased used to attend Labour and industrial cases alongwith the Managing Director on behalf of the Company; that the deceased, during the strike period, removed the finished goods and

documents; that he used to negotiate on behalf of the company with the workman; that the Clerks of the Company were paid less than Rs. 1,000/- per month whereas the deceased was paid salary of Rs. 2,500/- per month; that although the deceased used to sign Muster Roll, the evidence on record clearly indicates that the deceased used to obtain Import Licence and he used to obtain Import Licence and he used to entertain the clients/customers of the Company and in the above circumstances, the Labour Court came to the conclusion that there was no merit in the contention advanced on behalf of the deceased that he was doing skilled or non-skilled work or technical work and that his salary did not exceed R. 1,600/- per month and that the nature of work was, therefore, clerical as alleged by him. The Labour Court also found that he used to even deal with customers and that he has admitted in his cross-examination, that he used to look after the affairs of the company and he used to sign letters on behalf of the company as principal officer of the company. In the above circumstances, the Labour Court came to the conclusion that the deceased was not a workman as defined u/s 2(s) of the Industrial Disputes Act. The Labour Court, on the second point, came to the conclusion that in the present case there was no termination of service. The deceased used to remain absent in 1981 on account of his ill-health. The deceased had serious cardiac problem and on account of his illness, he remained absent and, therefore, there was no merit in the contention that the services of the deceased came to be terminated by way of retrenchment which was without complying the provisions of the Industrial disputes Act. In the above circumstances, the Labour Court rejected the Reference filed at the instance of the employee.

4. In the present case, Mr. Nargolkar, the learned Advocated appearing on behalf of the petitioner submitted that the deceased petitioner was required to sign Muster Roll. He submitted that the deceased petitioner was required to sign Muster Roll. He submitted that the petitioner was doing typing work. He submitted that clerical work was required to be done by the deceased. He submitted that the main dominant factor of his work was clerical and in the present case, there was nothing to indicate that he exercised supervisory or Managerial powers so as to bring the case of the deceased outside the four-corners of Section 2(s) of the Industrial Disputes Act. Mr. Nargolkar further submitted that the petitioner died on 14th March 1991. He has served his employer loyally. He had, at his own personal risk, saved the situation many a times during the strike period and according to the learned Advocate appearing for the deceased in the present case, the services of the deceased came to be illegally terminated without any prior notice or compensation and, therefore, the termination was bad in law. On the other hand it is contended by Mr. Singh, the learned counsel appearing on behalf of the Company that the Labour Court has given a finding of fact based on appreciation of evidence and no intervention is called for under Article 226 if the Constitution. He submitted that the facts mentioned hereinabove have been duly proved by the Company. The facts clearly indicate that the deceased-petitioner was working as a Personal Assistant to the

Managing Director. He used to negotiate with the workmen. The deceased used to sign Affidavits in the Court on behalf of the Company. He used to sign letters and Affidavits as Principal Officer of the Company. His salary exceeded Rs. 1,600/- per month. He was paid Rs. 1,000/- as conveyance which was not the case with other clerks of the Company and in the circumstances, Mr. Singh submits that the finding of fact recorded by the Labour Court should not be interfered with. Mr. Singh also points out a finding of fact on the second point viz. that in the present case, the deceased had cardiac problems. There are various letters written by the deceased to the Company informing the Company that he will not be able to attend the duties on the ground of illness. Mr. Singh further submits that the company has never terminated the service of the deceased in the above circumstances, it is only on the ground of ill-health that the deceased had abandoned the service for which the Labour Court has given a categorical finding in favour of the deceased. However, Mr. Singh very fairly points out that at a very crucial time, the deceased had helped the company for which the company offers Rs. 30,000/- as an ex-gratia amount notwithstanding the fact that the Labour Court has rejected the Reference filed by the deceased. The deceased had worked for about two years and it is only on a sympathetic consideration and since the petitioner had died on 14th March 1991, that Mr. Singh the learned counsel appearing on behalf of the company states that the company offers Rs. 30,000/- as an ex-gratia amount.

5. As regards the merits of the case, I find considerable merit in the contentions advanced by Mr. Singh, the learned counsel appearing on behalf of the Company. Firstly, the Labour Court has given a finding of fact in conformity with the evidence on record. The evidence clearly indicates that the deceased used to work in the Managerial/Supervisory capacity. He used to sign Affidavits and letters as a Principal Officer of the Company. He used to enter into settlement/ negotiations with the Union on behalf of the Company. he was paid salary of Rs. 2,500/- per month which was not the salary paid to the clerks in the company. He was also paid Rs. 1,000/- as conveyance allowed. Taking into account, all the above facts, there is no warrant to interfere with the finding of fact recorded by the Labour Court. Even on the second question of the termination of service, Mr. Singh is right in his contention that in 1981, the employee remained absent several times. It is established by evidence on record that the deceased had cardiac problems. There is nothing on record to indicate that his services were terminated. In the above circumstances, on both the above counts, the Labour Court was right in rejecting the Reference.

6. In the above circumstances, there is no merit in the Writ Petition. The Writ Petition fails. Rules is discharged with no order as to costs. However, in view of what is stated hereinabove, the Company is directed to pay Rs. 30,000/- by way of ex-gratia amount to the widow within 4 weeks from today.